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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.01.2020

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

C.R.P.(NPD)(MD)No.578 of 2005

Chellandi ... Petitioner/Respondent/Plaintiff

vs.

1.Malaiammal (Died) ... Respondent/Appellant Defendant

2.Subbulakshmi
3.Jayalakshmi ... Respondents 2 & 3

(cause title amended vide Court order dated 26.09.2016 made in MP (MD).1/2009 in CRP(MD)(NPD)(MD)No.578/2005, by substituting Respondents 2 & 3 in the place of deceased Respondent 1.)

PRAYER: This Civil Revision Petition is filed under Section 227 of the Constitution of India, against the order dated 27.12.2004 and made in I.A.No.403 of 2004 in A.S.No.51 of 2002 on the file of the District Court, Karur.

For Petitioner: Mr.R.Vijayakumar

For R2 : Dismissed vide Court Order dt.26.06.2019.
For R3 : No Appearance

ORDER

This Civil Revision Petition is directed against the order made in I.A.No.403 of 2004 in A.S.No.51 of 2002 dismissing the application to restore the copy application that was struck off on 28.11.2002. The reason assigned in the affidavit filed in support of the application is that the petitioner suffered from paralytic attack and due to the said illness, he could not contact his counsel to get certified copies in time.

2. His application was dismissed on the technical ground that the petitioner was not suffering from paralytic attack on the date of the judgment. It is true that the judgment was delivered on 31.10.2002 and application made for copies on 06.11.2002, stamps were called for on 18.11.2002 and since stamps were not deposited

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the copy application was dismissed on 28.11.2002. Since the medical evidence produced by the petitioner was between 31.12.2003 and 05.01.2004, the appellate Court concluded that there is no evidence for the alleged illness during the month of November, 2002.

3. Restoration of an application is a discretion of the Court, which has to be exercised liberally, since irreparable prejudice would be caused to the parties, if the copy application was not restored. The Hon'ble Supreme Court as well as this Court have been repeatedly reiterating the requirement of the Courts to be liberal in the cases of delay and in the case like one on hand, more liberal approach is expected.

4. The appellate Court had dismissed the application for restoration of copy application on hyper technical grounds, which cannot be justified.

5. I am of the considered opinion that the appellate Court must be more liberal in its approach, while considering an application for restoration of copy application, which was struck off for non furnishing of stamps. It should also be remembered that most of the time it is the counsel or the counsel's clerk, who is at fault in getting the copy application struck off. Therefore, the order of the appellate Court made in I.A.No.403 of 2004 is set aside and I.A.No.403 of 2004 is allowed and the copy application in C.A.No.4256 dated 06.11.2002 will stand restored.

6. This Civil Revision Petition is allowed accordingly. No costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

The District Court, Karur.

+1 CC to M/s.R.VIJAYAKUMAR, Advocate (SR-4227[F] dated 31/01/2020)

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